



**DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF RESOLUTION MANAGEMENT**

151 Knollcroft Road
Building 16
Lyons, NJ 07939

**Investigative Report
In the Matter of the EEO Complaint of Discrimination of:**

Howard Friedman)

v.)

Secretary)

Department of Veterans Affairs)

810 Vermont Avenue NW)

Washington, DC 20420)

Respondent)

ORM No. 200H-0541-2021102369

Facility: Louis Stokes)

VA Medical Center)

Cleveland, OH)

Melissa Senatus)

EEO Investigator)

Office of Resolution Management)

151 Knollcroft Road Bldg. 16)

Lyons, NJ 07939)

I. Introduction

Having met all procedural requirements for acceptance, with respect to the issues specified hereafter; this complaint was accepted for investigation on May 5, 2021. The complaint was assigned for investigation on June 29, 2021. An investigation using written affidavits was conducted from July 27, 2021 – September 12, 2021. Submitted for the consideration of the Regional EEO Officer on this September 13, 2021.

II. Background

Howard Friedman referred to as the Complainant, at the time of this complaint, was a Medical Manager at the Lake County Community Based Outpatient Clinic (CBOC) with the Louis Stokes VA Medical Center in Cleveland, OH. Complainant has held this position for 18 years. Complainant made timely contact with an EEO Counselor

000049

GOVERNMENT
EXHIBIT

A

USA 000049

on February 23, 2021. Counseling efforts did not resolve the complaint and Complainant filed a formal complaint on March 26, 2021.

III. Claims and Basis

The following claims were accepted as outlined in the Notice of Acceptance. **(Section 3-1):**

Whether complainant was discriminated against based on age and religion (Jewish) when:

- 1) On January 28, 2021, complainant's incentive award was rescinded.**
- 2) On February 1, 2021, complainant was given a lowered performance appraisal.**
- 3) On February 9, 2021, complainant's Clinical Privileges were summarily suspended.**
- 4) Beginning on March 4, 2021, complainant was unable to access his work computer and/or VA accounts which culminated in his becoming aware that his PIV account was no longer active.**

IV. Review of Documents

Provided by Agency:

EEO email facility response	7-6
Organizational Chart and employee breakdown EEO categories	7-7
Performance Award payment documentation	7-8
Clinical Privileges suspended documentation	7-9
Suspension letter	7-10
Performance Plan	7-11
VA Policy 005-005 Disciplinary Actions	7-12

Provided by Complainant:

Documentation to support complaint 7-1, pp.20-44

V. Summary

The witnesses provided the following testimony:

Howard Friedman (Complainant) (Age: 63); (Religion: Jewish) was a Medical Manager at the Lake County Community Based Outpatient Clinic in Lakewood, OH under the Louis Stokes VA Medical Center in Cleveland, OH. Complainant has held

that position for 18 years and 10 months and worked for the Department of Veterans Affairs for 18 years and 10 months. Complainant identified Corinna Falck-Ytter (RMO CFY) as his first line supervisor and Dr. Brian Cmolik (RMO BC) as his second line supervisor. Complainant stated that RMO CFY was aware of his age and religion. (7-1, p. 2)

Investigator Note: Complainant notified Investigator Senatus on August 31, 2021, that he had retired from the Louis Stokes VA Medical Center on August 29, 2021. (7-1, p.10)

Investigator Note: Complainant notified Investigator Senatus on August 31, 2021 that he was no longer represented by Attorney Joshua Kahn for this EEO Complaint. (7-1, pp. 11-14)

Corinna Falck-Ytter (RMO CFY) (Age: 56) (Religion: None) is an Associate Chief of Staff for Primary Care at the Louis Stokes VA Medical Center in Cleveland, OH. RMO CFY has held this position for 15 months and worked for the Department of Veterans Affairs for six years. RMO CFY stated she was not aware of Complainant's age or religion. (7-2, p. 2)

Brian Cmolik (RMO BC) (Age: 63) (Religion: None) is the Chief of Staff at the Louis Stokes VA Medical Center in Cleveland, OH. RMO BC has held this position for 24 years and 10 months and worked for the Department of Veterans Affairs for 28 years and two months. RMO BC stated he was not aware of Complainant's age or religion. (7-3, p.2)

Steve Savino (SME SS) (Age: 36) (Religion: None) is a Senior Strategic Business Partner for Human Resources for VISN 10. SME SS stated he was not aware of Complainant's age or religion. (7-4, pp. 2-3)

Investigator Note: SME SS provided testimony response in a Summary Affidavit for Claim #1 only. (7-4)

Gwendalyn Williams, (SME GW) (Age: 55) (Religion: Jehovah's Witness) is a Human Resource Specialist/Compensation for VISN 10. SME GW stated she was not aware of Complainant's age or religion. (7-5)

Investigator Note: SME GW provided testimony response in a Summary Affidavit for Claim #1 only. (7-5)

Claims:

The witnesses testified to the following:

Whether complainant was discriminated against based on religion (Jewish) and age when:

1) On January 28, 2021, complainant's incentive award was rescinded.

Complainant stated he felt discriminated but did not provide an actual reason based on age and religion (Jewish). Complainant further explained *"Because they were allowed to let me keep it, it was in my pay scale, my long service and dedication and long history of excellence". (7-1, p.3)*

RMO CFY stated she did not discriminate against Complainant based on his age or religion. RMO CFY further explained *"I was not aware that an award was rescinded. Multiple providers were erroneously paid twice and had to pay back the overpaid amount". (7-2, p.3)*

SME SS stated he did not discriminate against Complainant based on his age or religion. SME SS further explained *"I do believe that Dr. Friedman is confusing the terms incentive award and physician performance pay. The date was not January 28, 2021. This was a physician performance pay paid at the end of December 2020. During the processing of these awards for physicians, a processing error was made. Specifically, duplicate physician performance pay amounts were paid out to 180 physicians. Two performance payments were made to these physicians and Dr. Friedman was one out of the 180 physicians that received this duplicate payment". (7-4, p.1)*

SME GW stated she did not discriminate against Complainant based on his age or religion. SME SS further explained *"I was contacted by Lead HR specialist she informed me that there were some coding errors with performance pay for some of the physicians. An email was going to be drafted and I was to contact each physician that would be affected by the coding error. I was informed that physicians were issued 2 payments and 1 of the payments was processed in error. Once the physicians received the 2nd payment they were not to spend it, as this amount would be deducted from their pay. My part in all of this was to send out the emails to an assigned list of physicians. I was informed that if a physician would contact me about questions than I was to refer them to Kimberly Ford and Steve Savino". (7-5, pp.1-2)*

2) On February 1, 2021, complainant was given a lowered performance appraisal.

Complainant stated he felt discriminated but did not provide an actual reason based on age and religion (Jewish). Complainant further explained *"The data does not*

match the results. Dates were also changed to line up with the suspension". (7-1, p.3)

RMO CFY stated she did not discriminate against Complainant based on his age or religion. RMO CFY further explained "*Bi-annual review of charts revealed excessive copy and paste in notes*". (7-2, pp. 3-4)

RMO BC stated he did not discriminate against Complainant based on his age or religion. RMO BC further explained that it was Corinna Falck-Ytter who gave Complainant the lowered performance appraisal. (7-3, p.3)

3) On February 9, 2021, complainant's Clinical Privileges were summarily suspended.

Complainant stated he felt discriminated but did not provide an actual reason based on age and religion (Jewish). Complainant further explained "*I am prevented from caring for my patients and not told why. I believe it is discrimination*". (7-1, p.4)

RMO CFY stated she did not discriminate against Complainant based on his age or religion. RMO CFY further explained "*Concerns about quality of medical care provided by Complainant were brought to my attention*". (7-2, p.4)

RMO BC stated he did not discriminate against Complainant based on his age or religion. RMO BC further explained "substandard clinical outcomes. Multiple staff concerns related to substandard clinical outcomes". (7-3, p.3)

4) Beginning on March 4, 2021, complainant was unable to access his work computer and/or VA accounts which culminated in his becoming aware that his PIV account was no longer active.

Complainant stated he felt discriminated but did not provide an actual reason based on age and religion (Jewish). Complainant further stated "*I was never told. I noticed it wasn't working, went to PIV office and they said I was retired*". (7-1, p.5)

RMO CFY stated she did not discriminate against Complainant based on his age or religion. RMO CFY further explained "*To the best of my knowledge, computer access is automatically terminated if no remote access in 90 days*". (7-2, p.5)

RMO BC stated he did not discriminate against Complainant based on his age or religion. RMO BC further explained "Only CPRS access was limited/suspended to my knowledge". (7-3, p.4)

6

The information in this report was obtained from witness testimonies and documentation provided by the complainant and /or the Agency.



Melissa Senatus
EEO Investigator

September 13, 2021